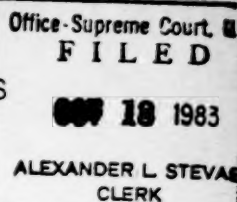


83-655

IN THE SUPREME COURT OF THE UNITED STATES



OCTOBER TERM, 1983

NO. _____

WOODROW W. CROWDER, Appellant,

vs.

THE STATE OF TEXAS, Appellee.

Appeal from the Court of Criminal Appeals of The State of Texas

Jurisdictional Statement

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Questions Presented

1. Does Article 4413(29cc) of the Texas Revised Civil Statutes Annotated (Vernon) violate the Equal Protection clause of the 14th Amendment to the Constitution of the United States by discriminating against psychological voice stress analysts as a class, so as to deprive them of their important right to earn a livelihood by following their chosen, legitimate occupation?

2. Does Article 4413(29cc) of the Texas Revised Civil Statutes Annotated (Vernon), a criminal statute, violate the Due Process clause of the 14th Amendment to the Constitution of the United States by failing to afford the Appellant procedural due process because the statutory description of the licensable process by which the detection of deception and the verification of truth is determined is so vague and overbroad that it fails to give the Appellant adequate notice of an act which may be criminal?

3. Does Article 4413(29cc) of the Texas Revised Civil Statutes Annotated (Vernon) violate the Due Process clause of the 14th Amendment to the Constitution of the United States because it fails to afford psychological voice stress analysts, who detect deception and verify the truth, a procedure by which they can become licensed while it purports to regulate all persons using instrumentations to detect deception or to verify truth of statements?

4. Is The State of Texas in violation of the Equal Protection clause of the 14th Amendment to the Constitution of the United States through its administration and enforcement of Article 4413(29cc) of the Texas Revised Civil Statutes Annotated (Vernon) by affording licensing procedures and licenses only to polygraph examiners, who detect deception and verify the truth of statements, and deny any procedure for licensing to psychological voice stress analysts, who detect deception and verify truth of statements, while purporting to regulate the entire field of lie detection and truth verification, so as to deprive the Appellant of his important right to earn a livelihood by following his chosen, legitimate occupation?

5. Does Article 4413(29cc) of the Texas Revised Civil Statutes Annotated (Vernon) violate the Equal Protection clause of the 14th Amendment to the Constitution of the United States by creating arbitrary, unreasonable and capricious standards and requirements for the instrumentation allowed to be used in lie detection and truth verification, so as to create a monopoly for polygraph examiners while depriving psychological voice stress analysts, who are similarly situated with polygraph examiners in that they verify truth and detect lies, of the right to earn a livelihood by following their chosen, legitimate occupation?

Parties

The Appellant who brings this case before the Supreme Court is Woodrow W. Crowder, the Defendant in the original cause tried before the County Court of Law No. 1 of Montgomery County, Texas. The Appellee is The State of Texas, the Plaintiff in the original trial of this cause in the County Court at Law No. 1 of Montgomery County, Texas.

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Opinion Below

The opinion upon which judgment was entered on July 20, 1983 by the Court of Criminal Appeals of The State of Texas, and from which the Appellant appeals to this Court, is unreported. A copy of the opinion is set out in Appendix "A" hereto.

Grounds of Jurisdiction of the Supreme Court

The appeal is from a final judgment made and entered in the Court of Criminal Appeals of The State of Texas, which is the highest Court for criminal cases in The State of Texas, upon a per curiam opinion. The judgment affirms the conviction of the Appellant under Article 4413(29cc) of the Texas Revised Civil Statutes Annotated (Vernon), and upholds the constitutionality of the Act. The Supreme Court of the United States has jurisdiction to review the final judgment by direct appeal pursuant to 28 U.S.C. §1257(2).

The final judgment was delivered and entered on July 20, 1983. Notice of appeal on behalf of the Appellant was filed on October 17, 1983 in the Court of Criminal Appeals of The State of Texas (a copy of which Notice is set out in Appendix "D" hereto).

Constitutional and Statutory Provisions Involved

Section 1 of the 14th Amendment to the Constitution of the United States, as ratified on July 9, 1868, provides:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, §1.

The Polygraph Examiners Act of Texas, Article 4413(29cc) Sec. 2 provides:

"Section 2. It is the purpose of this Act to regulate all persons who purport to be able to detect deception or to verify truth of statements with the use of instrumentation (as lie detectors, polygraphs, deceptographs and/or similar or related devices and instruments without regard to the nomenclature applied thereto) and this act shall be liberally construed to regulate all of such persons and instruments. No person who purports to be able to detect deception or to verify truth of statements through instrumentation shall be held exempt from the provisions of this act because of the terminology which he may use to refer to himself to his instrument or to his services." TEX. REV. CIV. STAT. ANN. art. 4413(29cc) §2 (Vernon 1976).

Section 4 of the Polygraph Examiners Act of The State of Texas, Article 4413(29cc) provides:

"Section 4. Any instrument used to test or question individuals for the purpose of detecting deception or verifying truth of statements shall record visually, permanently, and simultaneously: (1) a subject's cardiovascular pattern and (2) a subject's respiratory pattern. Patterns of other physiological changes in addition to (1) and (2) may also be recorded. The use of any instrument or device to detect deception or to verify truth of statements which does not meet these minimum instrumentation requirements is hereby prohibited and the operation or use of such equipment shall be subject to penalties and maybe enjoined in the manner hereinafter provided." TEX. REV. CIV. STAT. ANN. art. 4413(29cc) §4 (Vernon 1976).

Section 26 of the Polygraph Examiners Act of The State of Texas, Article 4413(29cc), as it read in 1978 when the alleged criminal act allegedly committed by the Appellant occurred, provided:

"Section 26. Any person who violates any provision of this act or any person who falsely states or represents that he has been or is a polygraph examiner or trainee or that he is qualified to apply instrumentation to the detection of deception or verification of truth of statements shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$1,000 or by imprisonment in the County Jail for a term of not to exceed 6 months, or both." TEX. REV. CIV. STAT. ANN. art. 4413(29cc) §26 (Vernon 1976).

Statement of Case

The facts of the case which underline this appeal are as follows:

Defendant/Appellant Woodrow W. Crowder, who is a competent operator and instructor of psychological voice stress evaluation, licensed under the laws of The State of Louisiana, tested a subject, Steven Carlson on February 1, 1978 using the psychological voice stress examining process. The Appellant used a tape recorder to tape the voice of the subject and did not record the subject's cardiovascular and respiratory patterns. A psychological voice stress analysis is used to detect deception and verify truth of statements made by the subject who is tested. The examination conducted by the Appellant was made on the premises of Helmer Polygraph Services in Montgomery County, Texas.

The Appellant was charged upon information of violating Section 4 of Article 4413(29cc) of the Texas Revised Civil Statutes Annotated (Vernon). The case was styled, The State of Texas vs. Woodrow W. Crowder, In the County Court at Law of Montgomery County, Texas, Case No. 34,739. Prior to trial the Defendant/Appellant filed a motion to set aside the information and in doing so raised the federal constitutional claims which form the basis of this appeal to the United States Supreme Court. The trial court denied the Defendant/Appellant's motion and the Defendant/Appellant was subsequently convicted of utilizing an illegal instrumentation for detecting deception or verifying truth. The court assessed punishment of 5 days confinement and a fine of \$200, probated for a period of 180 days.

At the time this case was disposed of at the trial court level the only method of appeal was to the Court of Criminal Appeals of The State of Texas. The Defendant/Appellant appealed to the Court of Criminal Appeals of The State of Texas which entered a judgment affirming the trial court on July 20, 1983. In that appeal the Defendant/Appellant raised the same federal constitutional claims which form the basis of this appeal to the United States Supreme Court.

Pertinent passages for the raising of constitutional claims in the state courts may be found in portions of the appendices hereto as follows:

1. Defendant's motion to set aside the information, Appendix "B;"
2. The Statement of Facts, pages II through IV hearing on Defendant's motion to set aside the information, Appendix "C;" and
3. The opinion of the Court of Criminal Appeals of The State of Texas upon which judgment was entered on July 20, 1983, Appendix "A."

Substantiality of Federal Questions

This appeal presents important and substantial questions as hereinafter described, in that the courts of The State of Texas both on the trial and highest appellate level, overruled the Defendant/Appellant's constitutional challenges to the statute and process under which he was convicted of a criminal offense, and thereby affirmed the constitutionality of Article 4413(29cc) of the Texas Revised Civil Statutes Annotated (Vernon) and the method of administration and enforcement of said statute by The State of Texas. Such circumstances put this case squarely within the requirements of 28 U.S.C. §1257(2), which grants to a party the right of a direct appeal to the United States Supreme Court where there is "drawn in question the validity of a statute of any state on the ground of its being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of its validity." Therefore, the Supreme Court has appellate jurisdiction to review the decision of the Court of Criminal Appeals of The State of Texas in this case.

This case involves the restraint of an individual's liberty through a criminal conviction under a statutory scheme which violates the 14th Amendment to the Constitution of the United States. The statutory scheme in question allows one group of people who detect deception and verify truth of statements to earn a living in their chosen occupation, while totally denying other individuals who are similarly qualified to detect deception and verify the truth of statements their right to earn a living by following their chosen profession. The distinction drawn by the state's statutory scheme in determining the legality and opportunity for obtaining a license in this occupation is so arbitrary, unreasonable and capricious that it violates the guarantee of equal protection of the laws under the 14th Amendment to the Constitution of the United States. Moreover, the vagueness and overbreadth of the statutory requirements for licensing, which if violated expose the violator to criminal penalties without a scienter requirement, subject psychological voice stress analysts to criminal prosecution without adequate constitutional notice of the crime for which they are alleged to have committed so as to violate the Due Process clause of the 14th Amendment to the Constitution of the United States. The unconstitutional effect of this statutory scheme upon the Defendant/Appellant is so substantial and serious that it requires plenary consideration with briefs on the merits and oral argument for its resolution, or else the Defendant/Appellant will be subject to a criminal conviction for an offense of which he had no

notice of criminal liability for the activity engaged in, and for engaging in an occupation which he is legally competent to perform and which other similarly situated persons are allowed to perform under licenses from the state without fear of prosecution for a criminal offense.

Conclusion.

For the reasons stated above Appellant submits that this appeal brings before the Court substantial and important federal constitutional questions which require plenary consideration with briefs on the merits and oral argument for their resolution, and that the Appellant has a right to a direct appeal before the Court under 28 U.S.C. §1257(2), based on the decision of the highest state court in The State of Texas affirming his conviction in criminal proceedings and affirming the validity of a state's statutory scheme, the validity of which was drawn in question as being repugnant to the United States Constitution.

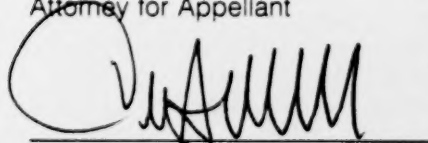
Dated October 17, 1983.

Respectfully submitted,
KENNEDY, BURLESON & HACKNEY

By:



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Of Counsel

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Jurisdictional Statement has this day been forwarded by first class certified mail, postage prepaid, return receipt requested on the 17th day of October, 1983, as follows:

Jim Mattox, Attorney General
The State of Texas
State Capitol
Austin, Texas 78711



Clinton P. Hackney

Appendix "A"
Opinion of Court of Criminal Appeals of Texas

WOODROW W. CROWDER, Appellant

NO. 63,543 v. - - - Appeal from MONTGOMERY County

THE STATE OF TEXAS, Appellee

OPINION

Appellant was convicted of utilizing illegal instrumentation for detecting deception or verifying truth.^{1/} The court assessed punishment at five days' confinement and a fine of \$200, probated for a period of 180 days.

Appellant has filed an untimely and multifarious brief in the cause, which presents nothing for review. Art. 40.09, V.A.C.C.P. However, we perceive an attempt to state several grounds of error which, although we find them to be without merit, we shall address.

One ground seeks to show vagueness in the statute by singling out various dictionary definitions of **instrument** (appellant posits the definition "one who is used by another" - to wit: a lackey) and **device** (appellant posits "scheme"). It is clear that instrument and device, in the context of the statute underlying this prosecution, refer to machines. The ground of error is utterly without merit.

^{1/}Art. 4413(29cc) V.A.T.S., §4, provides:

"Any instrument used to test or question individuals for the purpose of detecting deception or verifying truth of statements shall record visually, permanently, and simultaneously: (1) a subject's cardiovascular pattern and (2) a subject's respiratory pattern. Patterns of other physiological changes in addition to (1) and (2) may also be recorded. The use of any instrument or device to detect deception or to verify truth of statements which does not meet these minimum instrumentation requirements is hereby prohibited and the operation or use of such equipment shall be subject to penalties and may be enjoined in the manner hereinafter provided."

Section 26 of that article provides:

"Any person who violates any provision of this Act or any person who falsely states or represents that he has been or is a polygraph examiner or trainee or that he is qualified to apply instrumentation to the detection of deception or verification of truth of statements shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$1,000 or by imprisonment in the county jail for a term of not to exceed six months, or both."

Appellant's contention that the statute is vague and overbroad because it does not specify **when** the simultaneous, visual, and permanent measurements of physiological functions must occur relative to the truth-seeking process and because it fails to specify **how** the functions are to be recorded, is similarly without merit. Any permanent, visual medium is clearly authorized, and simultaneity of the functions and the truth seeking process itself is clearly contemplated.

Appellant seems to contend further that the statute impermissibly creates arbitrary classifications in violation of the Equal Protection Clause of the 14th Amendment (although the argument is made in reference to the Due Process Clause). The classification appellant claims to be arbitrary is of persons "who purport to detect deception or verify truth" using unauthorized means as distinguished from those who use authorized means. We will not substitute for the Legislature's our own determination of whether the limitation of devices is desirable: it is clearly rationally related to a legitimate State interest, and, because it singles out a group the members of which are members **by choice** and not by birth, creed, or immutable characteristic, it need pass no stricter standard of review.

The ground of error is overruled.

Appellant also contends that the statute violates the Due Process Clause of the 14th Amendment by depriving him of a full and fair hearing before determining that he is in violation thereof. Surely appellant is aware that he was accorded a trial by jury, with the full panoply of rights appurtenant thereto. The contention is frivolous.

Appellant finally contends the court erred in overruling his motion for instructed verdict. He bases his claim upon the dual contentions that the witnesses against him were accomplices as a matter of law and therefore their uncorroborated testimony was insufficient, and that, even assuming their testimony could be sufficient, there was no proof that no simultaneous measuring devices were used, only that the witnesses saw none.

The jury was entitled to infer, from the uncontroverted testimony of two eyewitnesses that no such devices were present, that no such devices were present.

Witness Helmer, a licensed polygraph operator, testified that appellant stated he was testing the subject present in her office upon a Psychological Stress Evaluation device. Helmer testified that she took no part in such test. Helmer was not charged with an offense. The evidence adduced does not show Helmer to have been an accomplice witness. Her testimony needed no corroboration, and was itself available to corroborate accomplice testimony.

The ground of error is overruled.

The judgment is affirmed.

PER CURIAM

Delivered July 20, 1983

By: Panel 1; 2nd Quarter, 1982

Tom G. Davis, Judge

W.C. Davis, Judge

Appendix "B"
Defendant's Motion in the Trial Court

NO. 34,739

| | | |
|--------------------|---|--------------------------|
| THE STATE OF TEXAS | § | IN THE COUNTY COURT AT |
| VS. | § | LAW OF |
| WOODROW W. CROWDER | § | MONTGOMERY COUNTY, TEXAS |

**DEFENDANT'S MOTION TO SET
ASIDE THE INFORMATION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Woodrow W. Crowder, defendant in the above entitled and numbered cause by and through his attorney of record, and prior to his announcement of ready, moves that the criminal information filed against him in this cause be dismissed by virtue of the authority of the Fifth, Sixth, and Fourteenth Amendments of the Constitution of the United States of America and Article 27.02, 27.03, 27.08, and 27.09 of C.C.P. for the following reasons:

I.

Because Vernon's Annotated Civil Statutes, Article 4413(29cc) is unconstitutional on the ground that such statute violates the Fourteenth Amendment, Section of the Constitution of the United States and the Texas Constitution, and any enforcement of such statute would deprive the defendant of his civil rights as guaranteed by 42 U.S.C. 1983 - 1985.

II.

That the State of Texas by and through its district attorney or county attorney are the persons charged with the duty of enforcing and prosecuting under Vernon's Annotated Civil Statutes, Art. 4413(29cc).

III.

That defendant at all times material hereto was a duly licensed and certified psychological stress and voice analyst and the owner of a psychological stress evaluator and other psychological voice analysis equipment.

IV.

That the purpose of the State statute in question is as follows:
Vernon's Annotated Civil Statutes, Art. 4413(29cc), Section Two:

It is the purpose of this Act to regulate all persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation (as lie detectors, polygraphs, deceptographs, and/or similar or related devices and instruments without regard to the nomenclature applied thereto) and this Act shall be liberally construed to regulate all such persons and instruments. No person who purports to be able to detect deception or to verify truth of statements through instrumentation shall be held exempt from the provisions of this Act because of the terminology which he may use to refer to himself, to his instrument, or to his services.

Further, Vernon's Annotated Civil Statutes, Art. 4413(29cc), Section four states:

Any instrument used to test or question individuals for the purpose of detecting deception or verifying truth of statements shall record visually, permanently, and simultaneously: (1) a subject's cardiovascular pattern and physiological changes in addition to (1) and (2) may also be recorded. The use of any instrument or device to detect deception or to verify truth of statements which does not meet these minimum instrumentation requirements is hereby prohibited and the operation or use of such equipment shall be subject to penalties and may be enjoined in the manner hereinafter provided.

V.

That the purpose of the State statute, by virtue of which criminal action is lodged fails to afford the defendant due process and equal protection under the laws, within the meaning of the Constitution of the State of Texas, and the fourteenth Amendment of the Constitution of the United States, in that such purpose is vague and overbroad because it purports to regulate all persons using instrumentation to detect deception or to verify truth of statements, without right to a predetermination hearing and without any other procedural safeguard for even minimal due process of law, to determine whether or not such persons and instrumentation come within the purview of this Act.

VI.

That the State statute, section four in question, fails to afford defendant due process and equal protection under the laws, within the meaning of the Constitution of the State of Texas and the Fourteen Amendment of the Constitution of the United States, in that such section is overly broad and vague because no period of time is specified for the recording visually, permanently, and simultaneously: (1) a subject's cardiovascular pattern; and (2) a subject's respiratory pattern.

VII.

That the State statute, section four in question, fails to afford due process and equal protection under the laws, within the meaning of the constitution of the State of Texas and the Fourteenth Amendment to the Constitution of the United States, in that such section is overly broad and vague in that such section fails to specify a method for recording (1) a subject's cardiovascular pattern; and (2) a subject's respiratory pattern.

VIII.

That the State statute, section four in question, fails to afford defendant due process and equal protection under the laws, within the meaning of the Constitution of the State of Texas and the Fourteenth Amendment to the Constitution of the United States, in that the requirements that a (1) subject's cardiovascular pattern; and (2) subject's respiratory pattern shall be recorded visually, permanently, and simultaneously is arbitrary, unreasonable, and capricious in that there is no reasonable basis for such requirement of instrumentation other than the creation of a monopoly in such area.

IX.

That the statute in question leaves defendant in doubt as to the intention of the statute, whether or not said intention is to regulate persons purporting to detect deception or verify truth of statements, or to create a monopoly in the area of one type instrumentation.

X.

That defendant would show that he is a member of a class who purports to detect deception or verify truth. It has been held repeatedly that the test as to meeting the requirements of due process is whether or not the law operates equally upon all who come within the class so affected, embracing all persons who are or may be in like situations or circumstances and; the Constitution is offended where a public law is applied differently to different persons under the same or similar circumstances. **Mayor of Savanna v. Savanna Distributing Co., Inc.**, 43 S.E.2d 704.

To fulfill the requirement of due process, the law must be applied so that it operates equally upon all who come within the class so affected. By viewing Article 4413 it is obvious that this statute fails to meet the test of due process when applied to those who purport to be able to detect deception or verify truth.

The article in question imposes criminal sanction on members of the same class who are simply using a different method of detection. That the statute provides for no predetermination hearing for this method or any other procedural safeguards for even minimal due process of law for members of the same class.

Therefore Article 4413, invidiously and irrationally discriminates against one member of a class who purports to verify truth and detect deception (psychological stress and voice analysis) by subjecting him to criminal prosecution, while others of the same class (polygraph, etc.) are not affected, and the due process clause of the Fourteen Amendment is violated thereby.

WHEREFORE, premises considered, the defendant prays that the court set aside the criminal information in the above styled and numbered cause.

Respectfully submitted,

By: _____
Virgil H. Barfield
3410 Mount Vernon Street
Houston, Texas 77006 225-9257
Attorney for Defendant

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared WOODROW W. CROWDER, known to me to be the person whose name is subscribed hereto, and who, after being by me first duly sworn upon his oath deposes and says:

My name is Woodrow W. Crowder and I am the defendant charged by indictment (or criminal information) in Cause No. 34,739 in the County Court of Montgomery County, Texas. I have read the foregoing motion to set aside the indictment (or criminal information) filed in said cause and the statements contained therein are true and correct, and the relief sought therein is necessary and vital in my defense of said indictment.

WOODROW W. CROWDER

SUBSCRIBED AND SWORN TO BEFORE me on this the _____ day of February, 1979.

Notary Public in and for
Harris County, Texas

My Commission expires:

Appendix "C"
Portion of the Statement Facts from the Trial Court

MORNING SESSION

**HEARING ON DEFENDANT'S
MOTION TO SET ASIDE THE INFORMATION**

MR. BARFIELD: The Defendant, Woodrow W. Crowder, would move to quash the Information based on the fact that no where in the Information is the Statute -- has it been cited nor is it clear as to the final sentence of the Information where it says, "and simultaneously the subject's cardiovascular pattern and the subject's respiratory pattern" -- that such defect in the Information does not properly apprise the Defendant of what he has to defend against.

MR. MACDONALD: The State answers that the Information does allege the proper amount of information as to what the charge is and to adequately defend against the matter.

JUDGE OUALLINE: Have you seen this before today?

MR. MacDONALD: This is the first time I've seen it.

JUDGE OUALLINE: Why don't you call Mr. Benardino.

MR. BARFIELD: That the Defendant, Woodrow W. Crowder, would move to set aside the Information on the further grounds that the Information

II

is not clear and concise and properly apprises the Defendant as to what he must defend against violating due process of law, to-wit: the Information does not at any point satisfy the Statute by which the Defendant is hereby charged nor does it in fact define the type of equipment as to what PSE is nor does it come within the Statute in that the last sentence of the Information reads and "simultaneously the Subject's cardiovascular pattern and the subject's respiratory pattern" all of which the Defendant would show is fatal in properly apprising him of what he must defend and is in violation of due process.

MR. MacDONALD: In reply thereto the State would set out that we are not required to set out the Statute violated but only the terms and the manner in which the law has been violated in a Statute. The violation in this case is connected to the cardiovascular pattern or the Subject's respiratory pattern and that's the violation of this act as set out in the statute, Your Honor. As to the word "subject" being misspelled, I think, Your Honor can take notice of the fact that if the intention is there and if the meaning is discernable, it's not a fatal variance.

MR. BARFIELD: In reply, I think the

III

Information allows points of speculation as to knowingly and intentionally and certainly as to what it means. It's only speculation as to what that means.

JUDGE OUALLINE: The Court is going to overrule the Motion.

MR. BARFIELD: Note my exception.

IV

Appendix "D"

NO. 34,739

THE STATE OF TEXAS § IN THE COUNTY COURT AT LAW
VS. § NUMBER ONE (1) OF
WOODROW W. CROWDER § MONTGOMERY COUNTY, TEXAS

ON APPEAL

THE STATE OF TEXAS, § IN THE COURT OF
APPELLEE § CRIMINAL APPEALS
VS. § OF
WOODROW W. CROWDER, APPELLANT § THE STATE OF TEXAS

NOTICE OF APPEAL

Notice is hereby given that Woodrow W. Crowder, the Defendant/ Appellant above-named hereby appeals to the United States Supreme Court from the final judgment in the Court of Criminal Appeals of the State of Texas entered in this action on July 20, 1983 in favor of The State of Texas, Plaintiff/Appellee. The Defendant/ Appellant grounds its right to appeal the above-stated final judgment to the Supreme Court under 28 U.S.C. §1257(2).

Dated October 14, 1983.

Respectfully submitted,
KENNEDY, BURLESON & HACKNEY

By: _____
Clinton P. Hackney
TSB# 08668500
2777 Allen Parkway, Ste. 1122
Houston, Texas 77019
713/520-8929
Attorney for Appellant

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Notice of appeal has this day been forwarded by first class certified mail, postage prepaid, return receipt requested on the 14 day of October, 1983, as follows:

Jim Mattox, Attorney General
The State of Texas
State Capitol
Austin, Texas 78711

Clinton P. Hackney